

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

MONIQUE LeBLANC, *ET AL.*)
)
V.) NO. 2:10-CV-54
)
TIMOTHY M. BUNSIC, *ETC.*)

REPORT AND RECOMMENDATION

The defendant's "Motion For Sanction of Dismissal of Case" was referred to the magistrate judge by order of the district judge. *See*, Order, Document 26.

The defendant's motion was premised on the failure or refusal of the plaintiff Monique LeBlanc to attend her pretrial discovery deposition on two separate occasions as scheduled by defendant's counsel.

By order filed on August 15, the magistrate judge ordered that the *pro se* plaintiffs should advise this court, in writing, by August 29, regarding any explanation they had for Monique LeBlanc's failure or refusal to cooperate with discovery or, alternatively, suggest to the court that some sanction short of dismissal was more appropriate.

Deputy Court Clerk Richard Connell has confirmed that, as of August 30, no communication has been received from either plaintiff.

Rule 37(d) of the Federal Rules of Civil Procedure addresses a party's failure to attend his/her own deposition; that rule in turn provides that any of the sanctions listed in Rule 37(b)(2)(A)(i)-(vi) are available. In the case of a recalcitrant plaintiff, in reality there are but

two meaningful sanctions: an order directing the plaintiff to participate in discovery, possibly including an award of attorney's fees, or an outright dismissal of the case. Here, although the court invited the plaintiffs to explain Ms. LeBlanc's failure to attend her own deposition, or to suggest a sanction other than dismissal, the plaintiffs did not do so. Thus, it is safe to assume that the plaintiffs would just as steadfastly ignore an order directing Ms. LeBlanc to appear for her deposition, thereby needlessly imposing upon the defendant more fees and costs.

It is respectfully recommended that defendant's motion for sanctions, Doc. 25, as amended by Doc. 27, be granted, and that this court dismiss plaintiffs' suit as a sanction for Ms. LeBlanc's failure to attend her deposition on two separate occasions as described in the motions.¹

Respectfully submitted,

s/ Dennis H. Inman
United States Magistrate Judge

¹Any objections to this report and recommendation must be filed within fourteen (14) days of its service or further appeal will be waived. 28 U.S.C. § 636(b)(1)(B) and (C). *United States v. Walters*, 638 F.2d 947-950 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).